

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Transportation Committee

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BILL: CS/SB 2488

SPONSOR: Transportation Committee and Senator Lynn

SUBJECT: Department of Transportation Contracts

DATE: April 21, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>TA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The Committee Substitute (CS) for Senate Bill 2488 requires the Florida Department of Transportation (FDOT) to convene a dispute review board (DRB) to examine claims arising out of construction contracts between FDOT and contractors prior to invoking the State Arbitration Board. The board is to be composed of three members; one member chosen by FDOT, one by the contractor, and one member agreed upon by the other two. The local government where the disputed work was performed must be notified of the DRB's proceedings. The DRB may hear testimony from the local government.

This CS creates s. 337.183 of the Florida Statutes.

## II. Present Situation:

Currently, FDOT may use DRBs to provide specialized expertise in technical areas and in administration of construction contracts to assist FDOT and the contractor in resolving disputes in a timely and equitable manner. DRBs are composed of three members; a member chosen by FDOT, a member chosen by the contractor, and a third member chosen by both parties. The current FDOT policy recommends all contracts over \$15 million should contain a special provision for a DRB for that project. However, FDOT has the option to include provisions for a project-specific DRB in contracts for projects less than \$15 million, for complex projects, or for projects with a higher than normal probability of disputable issues. All contracts should include provisions for either a project-specific DRB or use of the regional dispute review board.

In the current practice, DRBs may convene on a regular basis throughout the performance of the contract. The DRB encourages FDOT and the contractor to resolve potential disputes without resorting to use of the DRB. However, when it becomes apparent that resolution is unlikely to be

accomplished by negotiation, a dispute is considered by the DRB. DRB meetings are recommended to coincide with regular periodic project progress meetings. FDOT furnishes each of the DRB members all documents necessary for the board to perform its function including copies of all contract documents. Board members are not the "representative of" or "advocate for" the party which selected them. The entire board functions as an objective, impartial and independent body at all times. Although both parties should place weight upon the recommendations of the DRB, they are not binding. Either party may appeal a recommendation to the DRB for reconsideration.

The State Arbitration Board is an entity of the State of Florida established by s. 337.185, F.S., to facilitate the prompt settlement of claims for additional compensation arising out of construction contracts between FDOT and the various contractors with whom it transacts business. A claim in an amount up to \$250,000, excluding interest claimed, shall be submitted for arbitration. At the claimant's option, a claim in an amount greater than \$250,000, but not greater than \$500,000, excluding interest claimed, may be submitted for arbitration. Upon agreement by both the contractor and FDOT, a claim in an amount greater than \$500,000, but not greater than \$1,000,000, excluding interest claimed may be submitted for arbitration. If a DRB was included in the contract, only issues which have been heard by the DRB may be included in a claim submitted for arbitration.

### **III. Effect of Proposed Changes:**

Generally, this CS establishes a prerequisite for any claim before the State Arbitration Board to have been heard by a DRB. The CS also requires an additional board member to be selected by the local government in which the work was performed.

The CS requires FDOT to convene a DRB to examine claims arising out of construction contracts between FDOT and contractors to facilitate the prompt settlement by reviewing such claims and recommend a solution prior to invoking the State Arbitration Board.

The board is to be composed of one member chosen by FDOT, one by the contractor, and one member agreed to by the other two. The proceedings of the board are open to the public and the local government where the disputed work was performed must be notified of the DRB's proceedings. The board will review the contract and may receive testimony from the parties and the local government where the disputed work was performed. If the parties do not accept the DRB's recommendation, the dispute proceeds to the State Arbitration Board.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

District review board members are compensated by FDOT. The potential for more board meetings will have an undetermined, yet likely negative impact on the FDOT.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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